Supreme Court, U.S.
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NO. 96-472

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

ROBERTSON-CECO CORP.,
Petitioner,
v.
METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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11 pp

QUESTION PRESENTED

Did the majority below err in failing to limit the time period during which the district court should examine a defendant's contacts with the forum to the year during which suit was filed?

PARTIES TO THE PROCEEDINGS

The original parties to this lawsuit included: (1) Metropolitan Life Insurance Company; (2) Robertson-Ceco Corp.; and (3) United Dominion Industries, Inc. Summary judgment was granted in favor of United Dominion on March 14, 1995. It was not a party to the appeal below, nor is it an interested party here.

There is no parent company of the respondent. Respondent's subsidiaries (other than wholly owned subsidiaries) are these:

Blodgett Holdings, Inc.
Briggs Holdings, Inc.
Briggs Plumbing Products, Inc.
Cicero/Cermak Corporation
Cloverleaf Properties, Inc.
Coating Technologies International, Inc.
Dan River, Inc.
Frialator International, Limited
Genesis Seguros Generales, Sociedad Anonima
De Seguros Y Reaseguros
GS Blodgett Corporation
GS Blodgett Inc.
GS Blodgett International LTD.
Kolon-Met Life Insurance Company
Magikitch'N, Inc.
Metropolitan Lloyds Insurance Company of Texas
Metropolitan Structures
Metropolitan Structures, Inc.
Metropolitan Structures West, Inc.
Morguard Investments Limited

MS Management Services, L.P.
Pitco Frialator, Inc.
Santander Met, S.A. (Mexico)
Seguros Genenis, S.A. (Spain)
State Street Research Portfolios, Inc.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

REASONS FOR DENYING THE PETITION 1

I. The Conditional Cross Petition Meets None Of The Traditionally Recognized Bases For Granting Certiorari 1

II. The Conditional Cross Petition Does, However, Furnish More Support For Granting Metlife's Petition 2

CONCLUSION 5

TABLE OF AUTHORITIES

Cases — Page

Burnham v. Superior Court of California, 495 U.S. 604 (1990) 4

Philadelphia and Reading R.R. v. McKibbin, 243 U.S. 264 (1917) 2

Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917) 3

Statutes and Rules:

28 U.S.C. §1254(1) 1

Sup. Ct. R. 10 2

RESPONDENT'S BRIEF IN OPPOSITION

Metropolitan Life Insurance Company requests that the Court deny Robertson-Ceco Corporation's conditional cross petition seeking review of an opinion of the Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Court of Appeal's opinion is reported at 84 F.3d 560 and reproduced in the Appendix to Metlife's Petition for a Writ of Certiorari (case no. 96-306), at 1a - 35a. The opinions of the district court are unreported and also reproduced in the Appendix of Metlife's Petition at 36a - 47a.

JURISDICTION

The Court of Appeals entered its judgment on May 22, 1996. (App. 1a.), and Metlife's petition was filed (by mail) on August 20, 1996, and placed on the docket on August 22, 1996. Robertson-Ceco's cross-petition was filed on September 23, and placed on the docket September 25, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

REASONS FOR DENYING THE PETITION

I. The Conditional Cross Petition Meets None Of The Traditionally Recognized Bases For Granting Certiorari

In support of its conditional cross petition, Robertson-Ceco has invoked none of the considerations governing review on certiorari. For instance, with respect to the question it has presented, Robertson-Ceco has identified no

conflict between or among the opinion of the Second Circuit below, and a decision of another United States Court of Appeals, a decision of a state court of last resort, or a relevant decision of this Court. Nor has Robertson-Ceco demonstrated that the Court of Appeals decided an important question of federal law that has not been, but should be, settled by this Court. Robertson-Ceco has also not taken the position that the Court of Appeals departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. Significantly, Robertson-Ceco has again solely relied on *specific* jurisdiction cases, and then for reasons which are not really apparent. Importantly, however, Robertson-Ceco has not suggested that the courts are having any particular difficulty with the issue it has presented, and that the issue is therefore a sufficiently important one. It therefore appears that none of the criteria of Sup. Ct. R. 10, whether express or implied, have been satisfied, by Robertson-Ceco's protective filing. Robertson simply has not shown any compelling reason why its question presented should be considered by the Court.

II. The Conditional Cross Petition Does, However, Furnish More Support For Granting Metlife's Petition

Robertson-Ceco's position that a period of one year should be used for measuring contacts curiously supports Metlife's position that *general* jurisdiction is the lineal descendant of one of the traditional bases of jurisdiction - corporate presence. Before ***International Shoe***, jurisdiction was traditionally imposed on corporations on a number of bases, including "presence." ***Philadelphia and Reading R.R. v McKibbin***, 243 U.S. 264, 265 (1917)(Mr. Justice Brandeis said, "A foreign corporation is amenable to process

to enforce a personal liability, in the absence of consent, only if it is doing business within the State in such a manner and to such extent as to warrant the inference that it is present there").[1]

That *general* jurisdiction derives historically from "presence" and "doing business" doctrines is supported by the last sentence of the conditional cross petition, where Robertson-Ceco admits, in essence, that there have existed "some years" during which Robertson-Ceco's contacts with Vermont were sufficiently significant that a lawsuit against it in Vermont would have been "reasonable." (Cross Petition, at 5.) The context of Robertson-Ceco's statement is its suggestion that its 1993 contacts, if considered in a vacuum, are insufficient to justify the imposition of *general* jurisdiction. However, since "contacts are commonly assessed over a period of years," as recognized by the Court of Appeals (App. 14a), Robertson-Ceco's admission that its contacts were sufficient during "some years" to make the imposition of jurisdiction "reasonable," validates Metlife's position, not only with respect to the reasonableness of imposing jurisdiction in this case, but more importantly in the sense that continuous and systematic contacts make the imposition of *general* jurisdiction reasonable, without resort to a supervening reasonableness/fairness inquiry, such as that employed by the majority below.

Robertson-Ceco's momentary lapse underscores the confusion that exists relative to the appropriate limits and application of the the concept of *general* jurisdiction. Again, it has been demonstrated, this time by Robertson-Ceco, that

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[1]Very distinguished authorities in other courts adopted this approach. *See, e.g.*, Judge Cardozo's opinion in *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915 (1917), which was met with wide approval in other states.

clarification is needed as to whether and to what extent traditional concepts of jurisdiction relative to corporations, survive ***International Shoe***, which furnished a broader base for sustaining jurisdiction than the older doctrines of "presence" and "implied consent."[2]

The court recently addressed a similar issue regarding traditional concepts of jurisdiction as it pertains to individuals in ***Burnham v. Superior Court of California***, 495 U.S. 604 (1990). The court now has the opportunity to complete the analysis begun in ***Burnham***, by addressing whether what were once constitutionally sufficient contacts remain the touchstone for the exercise of general jurisdiction over a corporation, without regard to a supervening and secondary reasonableness / fairness inquiry. Resolution of this issue will promote certainty and predictability in jurisdiction determinations.

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[2]Implicit in ***International Shoe***, is that the Court was not overruling the earlier precedents, but was substituting an appropriate rationale to demonstrate their consistency. While jurisdiction doctrine may have evolved, the criterion ("doing business") remained the same, and the Court did not purport to overrule the multitude of cases which rested on that criterion.

CONCLUSION

Robertson-Ceco's petition for a writ of certiorari should be denied.

Respectfully submitted,

By:_____

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